Testimony of Michael Gadola, Supreme Court Counsel
SB 1400, HB 6260
Senate Judiciary Committee
House Committee on Civil Law and the Judiciary
September 18, 2002

Thank you for the opportunity to speak to you today concerning SB 1400 and HB 6260, which represent the Legislature's most recent effort at trial court reorganization. I first want to commend the bill sponsors, our committee chairmen, for undertaking this important effort. Chief Justice Corrigan has already expressed her appreciation and I echo her words of thanks. Trial court reorganization is the type of nuts and bolts work of government that doesn't win headlines or make for fancy reelection brochures, but which is nonetheless vitally important to the fair and efficient delivery of justice to Michigan's citizens. We appreciate your persistence in pursuing the worthwhile goals of trial court reorganization.

Let me begin by making it clear that I am not here to endorse the bills that are before you today. I am prevented from doing so by the possibility that litigation concerning court reorganization could find its way to the Michigan Supreme Court. But the Supreme Court does have an important constitutional role to play in the superintendence and administration of our trial courts, and it is in furtherance of those obligations that I address you today.

I will begin by reiterating the principles the Court has outlined concerning court reorganization by way of a brief recent history. I will also discuss the successful experiences of our trial court demonstration projects and invite two of our demonstration project chief judges, Paul Maloney of Berrien County and James Fisher of Barry County, to discuss the positive outcomes of trial court consolidation in their counties. I would then be happy to answer any questions you might have.

As you know, trial court reorganization has a long legislative and judicial history. Going back just to 1990, the legislatively-created Commission on Courts in the 21st Century called for unified trial courts (by 1997), suggested the possibility of consolidating family cases in a single court, and suggested that the SCAO conduct at least three "pilot projects" involving unified trial courts and report back to the Supreme Court and Legislature with recommendations for appropriate action. Twelve years later we now have a unified Family Division in Circuit Court and we have created not 3, but 7, trial court demonstration projects with remarkably positive results. But despite the urging of several Chief Justices throughout the 1990s, we have not achieved the Commission's goal of unified trial courts.

On July 27, 2001, the Supreme Court sent a letter to the Governor, Legislature, and trial judges, in which it committed to begin the process of constructing a proposal for court reorganization. The Court announced that it would hold a series of public hearings on court reorganization, beginning September 13, 2001. Ultimately three such hearings were held.

Significantly, the Court made the following statement concerning the continued operation of the family division and the demonstration projects:

> Although this Court has appropriately used its assignment authority to test potentially valuable changes in the demonstration courts and to implement the family division, such prerogative is not a substitute for permanent structural change as authorized by the people through constitutional amendment or by the Legislature as permitted by the constitution. The Court is ready to work with the Legislature to develop a plan that will provide for the continued operation of the family division with or without the assignment of judges from other courts, in a manner that allows for local flexibility, and to extend the benefits of the demonstration projects to all Michigan citizens.

In this letter the Court reiterated its commitment to the family division and called for extending the benefits of the unified demonstration project courts to all state trial courts.

Following the three public hearings on court reorganization, the Supreme Court again communicated with the Governor and legislative leadership. Recognizing that a one-size-fits-all approach is not likely to be successful, the Court stated that "the appropriate solution to the issue of court reorganization is a plan that would permit, consistent with the constitution, concurrent jurisdiction among the trial courts on a local option basis." The Court went on to state that "the Governor and the Legislature should further be advised that the Court believes that the indefinite cross-assignment of Probate judges into the Family Division should not be a permanent solution and that this issue must be addressed with some urgency by the Legislature."

SB 1400 and HB 6260 appear to address the concerns and objectives the Court has recently expressed concerning trial court organization. First, it is clear that the Court believes that the cross-assignment of Probate judges into the Family Division of Circuit Court should not go on indefinitely. SB 1400 would eliminate the need for the cross-assignments by giving Probate judges hearing Family Division cases under a Supreme Court-approved "family court plan," the "power and authority" of Circuit judges. This appears to be consistent with the authority granted to the Legislature in Article VI, sec. 15 of the state constitution, which states that "[t]he jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law."

Second, the Supreme Court has recommended a plan that would permit, consistent with the constitution, concurrent jurisdiction among the trial courts on a local option basis. HB 6260 would permit local trial courts to unify their jurisdiction, with certain exceptions, at local option, with the approval of a concurrent jurisdiction plan by the Supreme Court. This bill recognizes what the Supreme Court has already recognized–that when it comes to trial court organization, one size does not fit all.

I have supplied each of you with a packet of information on the topic of trial court organization, which includes the Court's two letters I have quoted, and which also includes an executive summary of an evaluation of the demonstration project courts completed about one

year ago by the National Center for State Courts. That evaluation concluded, among other things, that the consolidated demonstration project courts have used resources more efficiently, have hastened the delivery of justice to families, have reduced the size and age of their pending case inventories, and have reduced operating costs or improved management of court revenues and costs. I commend this report to you because it speaks directly to the myriad benefits of consolidated trial courts and should help guide your deliberations on this important topic.

In that vein, I would like to turn the microphone over to two of our demonstration project chief judges to relate their experiences to you, and then Mr. Ferry and I will be available for any questions you may have.